

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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ANGELICA CALIXTO, as Mother and Natural Guardian of
S [REDACTED] V [REDACTED], an infant under the age of eighteen
years,

Plaintiff,

AMENDED COMPLAINT

-against-

07 CV 5356 (CPS) (RLM)

THE CITY OF NEW YORK, P.O. NICHOLAS
DEROBERTIS, P.O. RANDOLPH CEDOTTE, SSA
RAUL ZAPATA, P.O. ELVIS DELGADO, P.O. OLGA
JIMINEZ, and P.O.s JOHN and JANE DOE #1-10,
individually and in their official capacities, (the names
John and Jane Doe being fictitious, as the true names are
presently unknown),

Defendants.

JURY TRIAL DEMANDED

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Plaintiff ANGELICA CALIXTO, as mother and natural guardian of S [REDACTED] V [REDACTED], by
her attorney, ROSE M. WEBER, complaining of the defendants, respectfully alleges as follows:

PRELIMINARY STATEMENT

1. Plaintiff brings this action for compensatory damages, punitive damages and attorney's fees pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988 for violations of her son's civil rights, as said rights are secured by said statutes and the Constitutions of the State of New York and the United States. Plaintiff also asserts supplemental state law tort claims.

JURISDICTION

2. This action is brought pursuant to 42 U.S.C. § 1983 and 42 U.S.C. § 1988, and the First, Fourth, Fifth, Eighth and Fourteenth Amendments to the United States Constitution.

3. Jurisdiction is founded upon 28 U.S.C. §§ 1331, 1343 and 1367.

VENUE

4. Venue is properly laid in the Eastern District of New York under U.S.C. § 1391(b), in that this is the District in which the claim arose.

JURY DEMAND

5. Plaintiff respectfully demands a trial by jury of all issues in this matter pursuant to Fed. R. Civ. P. 38(b).

PARTIES

6. [REDACTED] is a 16-year-old Latino male, a citizen of the United States, and at all relevant times a resident of the City and State of New York.

7. Defendant, THE CITY OF NEW YORK, was and is a municipal corporation duly organized and existing under and by virtue of the laws of the State of New York.

8. Defendant, THE CITY OF NEW YORK, maintains the New York City Police Department, a duly authorized public authority and/or police department, authorized to perform all functions of a police department as per the applicable sections of the New York State Criminal Procedure Law, acting under the direction and supervision of the aforementioned municipal corporation, City of New York.

9. That at all times hereinafter mentioned, the individually named defendants P.O. NICHOLAS DEROBERTIS, P.O. RANDOLPH CEDOTTE, SSA RAUL ZAPATA, P.O. ELVIS DELGADO, P.O. OLGA JIMINEZ, and P.O.s JOHN and JANE DOE #1-10 were duly sworn police officers of said department and were acting under the supervision of said department and according to their official duties.

10. That at all times hereinafter mentioned the defendants, either personally or through their employees, were acting under color of state law and/or in compliance with the official rules, regulations, laws, statutes, customs, usages and/or practices of the State or City of New York.

11. Each and all of the acts of the defendants alleged herein were done by said defendants while acting within the scope of their employment by defendant THE CITY OF NEW YORK.

12. Each and all of the acts of the defendants alleged herein were done by said defendants while acting in furtherance of their employment by defendant THE CITY OF NEW YORK.

FACTS

13. On March 8, 2007, at approximately 11:00 a.m., [REDACTED] was lawfully present in Franklin D. Roosevelt High School, located at 5800 20th Avenue, in the County of Kings, in the City and State of New York.

14. At aforesaid time and place, [REDACTED] was suddenly accosted by members of the New York City Police Department.

15. Defendants hit [REDACTED] in the head, punched him in the mouth, wrestled him to the ground, and kned him in the head.

16. As a result of this unprovoked assault, [REDACTED] sustained, *inter alia*, injuries to his head, nose, lips, eye, and abdomen.

17. Defendants placed [REDACTED] under arrest, despite defendants' knowledge that they lacked probable cause to do so.

18. [REDACTED] was transported to the 66th Precinct of the New York City Police Department, in Brooklyn, New York, where he was detained and held in custody for approximately two hours.

19. At the precinct, [REDACTED]' injuries were treated by EMS.

20. Defendants initiated criminal proceedings against [REDACTED], despite defendants' knowledge that they lacked probable cause to do so.

21. During the period between March 8, 2007 and July 13, 2007, [REDACTED] was required to make several court appearances to defend himself in the criminal proceedings that defendants had initiated against him.

22. On or about July 13, 2007, [REDACTED] accepted an Adjournment in Contemplation of Dismissal.

23. As a result of the foregoing, [REDACTED] sustained, *inter alia*, bodily injuries; emotional distress, embarrassment, and humiliation; and deprivation of his constitutional rights.

FIRST CLAIM FOR RELIEF
DEPRIVATION OF FEDERAL RIGHTS UNDER 42 U.S.C. § 1983

24. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs "1" through "23" with the same force and effect as if fully set forth herein.

25. All of the aforementioned acts of defendants, their agents, servants and employees, were carried out under the color of state law.

26. All of the aforementioned acts deprived [REDACTED] of the rights, privileges and immunities guaranteed to citizens of the United States by the First, Fourth, Fifth, Eighth and Fourteenth Amendments to the Constitution of the United States of America, and in violation of 42 U.S.C. § 1983.

27. The acts complained of were carried out by the aforementioned individual defendants in their capacities as police officers, with all of the actual and/or apparent authority attendant thereto.

28. The acts complained of were carried out by the aforementioned individual defendants in their capacities as police officers, pursuant to the customs, usages, practices, procedures, and the

rules of the City of New York and the New York City Police Department, all under the supervision of ranking officers of said department.

29. Defendants, collectively and individually, while acting under color of state law, engaged in conduct that constituted a custom, usage, practice, procedure or rule of the respective municipality/authority, which is forbidden by the Constitution of the United States.

SECOND CLAIM FOR RELIEF
FALSE ARREST UNDER 42 U.S.C. § 1983

30. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered “1” through “29” with the same force and effect as if fully set forth herein.

31. As a result of the aforesaid conduct by defendants, [REDACTED] was subjected to an illegal, improper and false arrest by the defendants and taken into custody and caused to be falsely imprisoned, detained, confined, incarcerated and prosecuted by the defendants in criminal proceedings, without any probable cause, privilege or consent.

32. As a result of the foregoing, [REDACTED], liberty was restricted for an extended period of time, he was put in fear for his safety, and he was humiliated and subjected to handcuffing and other physical restraints, without probable cause.

THIRD CLAIM FOR RELIEF
MALICIOUS ABUSE OF PROCESS UNDER 42 U.S.C. § 1983

33. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered “1” through “32” with the same force and effect as if fully set forth herein.

34. Defendants issued legal process to place [REDACTED] under arrest.

35. Defendants arrested [REDACTED] in order to obtain a collateral objective outside the legitimate ends of the legal process.

36. Defendants acted with intent to do harm to [REDACTED], without excuse or justification.

FOURTH CLAIM FOR RELIEF
EXCESSIVE FORCE UNDER 42 U.S.C. § 1983

37. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered “1” through “36” with the same force and effect as if fully set forth herein.

38. The level of force employed by defendants was objectively unreasonable and in violation of [REDACTED]’ constitutional rights.

39. As a result of the aforementioned conduct of defendants, [REDACTED] was subjected to excessive force and sustained physical injuries.

FIFTH CLAIM FOR RELIEF
FAILURE TO INTERVENE

40. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered “1” through “39” with the same force and effect as if fully set forth herein.

41. Each and every individual defendant had an affirmative duty to intervene on [REDACTED]’ behalf to prevent the violation of his constitutional rights.

42. The individual defendants failed to intervene on [REDACTED]’ behalf to prevent the violation of his constitutional rights despite having had a realistic opportunity to do so.

43. As a result of the aforementioned conduct of the individual defendants, [REDACTED]’ constitutional rights were violated and he was subjected to excessive force and sustained physical injuries.

SIXTH CLAIM FOR RELIEF
MUNICIPAL LIABILITY

44. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered “1” through “43” with the same force and effect as if fully set forth herein.

45. Defendants, collectively and individually, while acting under color of state law, engaged in conduct that constituted a custom, usage, practice, procedure or rule of the respective municipality/authority, which is forbidden by the Constitution of the United States.

46. The aforementioned customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department included, but were not limited to, using excessive force on minority males while taking them into custody.

47. The existence of the aforesaid unconstitutional customs and policies may be inferred from repeated occurrences of similar wrongful conduct, as documented in the following civil rights actions filed against the City of New York:

- **Gaybourne Busano v. City of New York**, United States District Court, Eastern District of New York, 03 CV 1486;
- **Corey Avent v. City of New York**, United States District Court, Eastern District of New York, 04 CV 2451;
- **Clifford Parker-Davidson v. City of New York**, United States District Court, Eastern District of New York, 04 CV 3242;
- **Anwaar Muhammad City of New York**, United States District Court, Eastern District of New York, 04 CV 1044.

48. The foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department constituted deliberate indifference to the safety, well-being and constitutional rights of [REDACTED].

49. The foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department were the direct and proximate cause of the constitutional violations suffered by [REDACTED] as alleged herein.

50. The foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department were the moving force behind the constitutional violations suffered by [REDACTED] as alleged herein.

51. As a result of the foregoing customs, policies, usages, practices, procedures and rules of the City of New York and the New York City Police Department, [REDACTED] was unlawfully assaulted, arrested and incarcerated.

52. Defendants, collectively and individually, while acting under color of state law, were directly and actively involved in violating [REDACTED]' constitutional rights.

53. All of the foregoing acts by defendants deprived [REDACTED] of federally protected rights, including, but not limited to, the right:

- A. Not to be deprived of liberty without due process of law;
- B. To be free from seizure and arrest not based upon probable cause;
- C. To be free from malicious abuse of process;
- D. Not to have excessive force imposed upon him;
- E. Not to have summary punishment imposed upon him; and
- F. To receive equal protection under the law.

54. As a result of the foregoing, [REDACTED] is entitled to compensatory damages in the sum of two million dollars (\$2,000,000.00) and is further entitled to punitive damages against the individual defendants in the sum of two million dollars (\$2,000,000.00).

PENDANT STATE CLAIMS

55. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered "1" through "54" with the same force and effect as if fully set forth herein.

56. On or about June 4, 2007, and within ninety (90) days after the claim herein accrued, plaintiff duly served upon, presented to and filed with the City of New York, a Notice of Claim setting forth all facts and information required under the General Municipal Law § 50-e.

57. The City of New York has wholly neglected or refused to make an adjustment or payment thereof and more than thirty (30) days have elapsed since the presentation of such claim as aforesaid.

58. The City of New York failed to schedule a hearing pursuant to General Municipal Law § 50-h and such hearing is accordingly deemed waived.

59. This action was commenced within one (1) year and ninety (90) days after the cause of action herein accrued.

60. Plaintiff has complied with all conditions precedent to maintaining the instant action.

61. This action falls within one or more of the exceptions as outlined in C.P.L.R. § 1602.

FIRST CLAIM FOR RELIEF UNDER N.Y. STATE LAW
FALSE ARREST

62. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered “1” through “61” with the same force and effect as if fully set forth herein.

63. Defendant police officers arrested [REDACTED] in the absence of probable cause and without a warrant.

64. As a result of the aforesaid conduct by defendants, [REDACTED] was subjected to an illegal, improper and false arrest by the defendants and taken into custody and caused to be falsely imprisoned, detained, confined, incarcerated and prosecuted by the defendants in criminal proceedings.

65. The aforesaid actions by the defendants constituted a deprivation of [REDACTED]
[REDACTED]’ rights.

SECOND CLAIM FOR RELIEF UNDER N.Y. STATE LAW
FALSE IMPRISONMENT

66. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered “1” through “65” with the same force and effect as if fully set forth herein.

67. As a result of the foregoing, [REDACTED] was falsely imprisoned, his liberty was restricted for an extended period of time, he was put in fear for his safety, and he was humiliated and subjected to handcuffing and other physical restraints.

68. [REDACTED] was conscious of said confinement and did not consent to same.

69. The confinement of [REDACTED] was without probable cause and was not otherwise privileged.

70. As a result of the aforementioned conduct, [REDACTED] has suffered physical and mental injury, together with embarrassment, humiliation, shock, fright and loss of freedom.

THIRD CLAIM FOR RELIEF UNDER N.Y. STATE LAW
ASSAULT

71. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered “1” through “70” with the same force and effect as if fully set forth herein.

72. Defendants’ aforementioned actions placed [REDACTED] in apprehension of imminent harmful and offensive bodily contact.

73. As a result of defendants’ conduct, [REDACTED] has suffered physical pain and mental anguish, together with shock, fright, apprehension, embarrassment, and humiliation.

FOURTH CLAIM FOR RELIEF UNDER N.Y. STATE LAW
BATTERY

74. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered “1” through “73” with the same force and effect as if fully set forth herein.

75. Defendant police officers touched [REDACTED] in a harmful and offensive manner.

76. Defendant police officers did so without privilege or consent from [REDACTED]
[REDACTED]

77. As a result of defendants' conduct, [REDACTED] has suffered physical pain and mental anguish, together with shock, fright, apprehension, embarrassment and humiliation.

**FIFTH CLAIM FOR RELIEF UNDER N.Y. STATE LAW
MALICIOUS ABUSE OF PROCESS**

78. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered "1" through "77" with the same force and effect as if fully set forth herein.

79. Defendant police officers issued legal process to place [REDACTED] under arrest.

80. Defendant police officers arrested [REDACTED] to obtain a collateral objective outside the legitimate ends of the legal process.

81. Defendant police officers acted with intent to do harm to [REDACTED], without excuse or justification.

82. As a result of the aforementioned conduct, [REDACTED] suffered physical and mental injury, together with embarrassment, humiliation, shock, fright, and loss of freedom.

**SIXTH CLAIM FOR RELIEF UNDER N.Y. STATE LAW
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**

83. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered "1" through "82" with the same force and effect as if fully set forth herein.

84. The aforementioned conduct was extreme and outrageous, and exceeded all reasonable bounds of decency.

85. The aforementioned conduct was committed by defendants while acting within the scope of their employment by defendant THE CITY OF NEW YORK.

86. The aforementioned conduct was committed by defendants while acting in furtherance of their employment by defendant THE CITY OF NEW YORK.

87. The aforementioned conduct was intentional and done for the sole purpose of causing severe emotional distress to [REDACTED]

88. As a result of the aforementioned conduct, [REDACTED] suffered severe emotional distress, physical and mental injury, together with embarrassment, humiliation, shock, fright and loss of freedom.

**SEVENTH CLAIM FOR RELIEF UNDER N.Y. STATE LAW
NEGLIGENT HIRING AND RETENTION**

89. Plaintiff repeats, reiterates and realleges each and every allegation contained in paragraphs numbered "1" through "88" with the same force and effect as if fully set forth herein.

90. Upon information and belief, defendant City of New York failed to use reasonable care in the hiring and retention of the aforesaid defendants who conducted and participated in the arrest of [REDACTED]

91. Defendant City of New York knew, or should have known in the exercise of reasonable care, the propensities of the defendants P.O. NICHOLAS DEROBERTIS, P.O. RANDOLPH CEDOTTE, SSA RAUL ZAPATA, P.O. ELVIS DELGADO, P.O. OLGA JIMINEZ, and P.O.s JOHN and JANE DOE #1-10 to engage in the wrongful conduct heretofore alleged in this Complaint.

**EIGHTH CLAIM FOR RELIEF UNDER N.Y. STATE LAW
NEGLIGENT TRAINING AND SUPERVISION**

92. Plaintiff repeats, reiterates and realleges each and every allegation contained in

paragraphs numbered “1” through “91” with the same force and effect as if fully set forth herein.

93. Upon information and belief the defendant City of New York failed to use reasonable care in the training and supervision of the aforesaid defendants who conducted and participated in the arrest of [REDACTED].

94. As a result of the foregoing, [REDACTED] is entitled to compensatory damages in the sum of two million dollars (\$2,000,000.00) and is further entitled to punitive damages against the individual defendants in the sum of two million dollars (\$2,000,000.00).

WHEREFORE, plaintiff ANGELICA CALIXTO, as mother and natural guardian of STEVEN VARGAS, demands judgment in the sum of two million dollars (\$2,000,000.00) in compensatory damages and two million dollars (\$2,000,000.00) in punitive damages, plus reasonable attorney’s fees, costs, and disbursements of this action.

Dated: New York, New York
June 10, 2008

_____/s_____
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